

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHARLES B.,

Plaintiff,

vs.

**5:21-CV-953
(TJM/DJS)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this action, brought pursuant to 42 U.S.C. § 405(g) to obtain review of the Commissioner of Social Security's decision denying Plaintiff's application for disability insurance benefits, to Magistrate Daniel J. Stewart for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Commissioner lacked substantial evidence to support that decision. Pursuant to the relevant local rules, Judge Stewart treats each parties' briefing as if they were motions for judgment on the pleadings.

Magistrate Judge Stewart's Report-Recommendation, dkt. # 16, issued on July 21, 2022, recommends that the Court remand the case to the Commissioner pursuant to sentence four of section 205(g) for further proceedings. Judge Stewart finds that the Commissioner erred by failing to provide proper weight to the opinion of a physician who

had treated Plaintiff's cervical pain for years. Judge Stewart recommends that the Court grant the Plaintiff's motion and direct the Commissioner to reconsider denying benefits after giving proper weight to the opinion evidence.

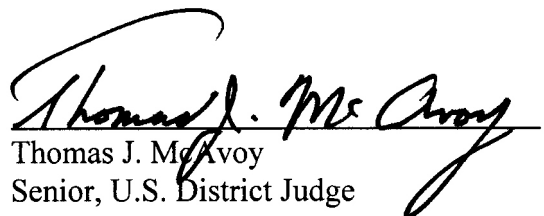
Neither party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Stewart, dkt. #16, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's motion for judgment on the pleadings, dkt. #13, is hereby **GRANTED**. Defendant's motion for judgment on the pleadings, dkt. #15, is hereby **DENIED**. The matter is **REMANDED** to the Commissioner of Social Security for further proceedings consistent with this opinion and Judge Stewart's Report-Recommendation.

IT IS SO ORDERED.

Dated: September 8, 2022


Thomas J. McAvoy
Senior, U.S. District Judge